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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 BENITA THOMAS, *et al.*,

11 Plaintiffs,

12 v.

13 KJM & ASSOCIATES, LTD.,

14 Defendant.  
15

CASE NO. C04-1756RSM

ORDER GRANTING MOTION TO  
COMPEL

16 This matter comes before the Court on defendant's motion to compel disclosure of  
17 documentation related to plaintiffs' damages claims and calculations. (Dkt. #13). On August  
18 10, 2004, defendant removed this action to federal court. Plaintiffs claim breach of contract,  
19 fraud and discrimination, retaliation, misrepresentation and a violation of Washington State's  
20 Consumer Protection Act ("CPA") by defendant, in connection with a 1998 Sound Transit  
21 project. (Dkt. #1). Plaintiffs essentially allege that defendant entered into a "Teaming  
22 Agreement," wherein defendant would act as the prime contractor, and plaintiffs as the  
23 subcontractor, for the Sound Transit project; but once Sound Transit accepted the proposed  
24 agreement, defendant failed to utilize plaintiffs as promised. Plaintiffs allege general damages  
25 "in an amount to be proven at trial." (Dkt. #1).

26 In its motion to compel, defendant argues that plaintiffs have failed to provide any

1 substantive responses to discovery requests pertaining to the amount of damages sought or  
2 alleged, and how those damages have been calculated. Defendant asserts that this discovery is  
3 essential to the evaluation and preparation of its case for trial.

4 Plaintiffs apparently believe they have provided at least partial documentation in support  
5 of their damages claim. They answer that they are perfectly willing to provide “additional  
6 information to support its damage claim,” but that they are in the process of working with an  
7 expert to prepare an itemization of damages, and will not be able to produce that information  
8 until May 11, 2005, at the latest, which is two months prior to the discovery deadline. (Dkt.  
9 #20).

10 Having reviewed defendant’s motion (Dkt. #13), plaintiffs’ opposition (Dkt. #20),  
11 defendant’s reply (Dkt. #23), the declarations in support of those briefs, and the balance of the  
12 record, the Court hereby ORDERS:

13 (1) Defendant’s Motion for an Order to Compel (Dkt. #13) is GRANTED. Rule 26 of  
14 the Federal Rules of Civil Procedure allow the parties to obtain discovery about any matter, as  
15 long as it is not privileged and it is relevant to the claim of any party. Fed. R. Civ. P. 26(b)(1).  
16 While plaintiffs suggest in their response that they have “produced many documents, including  
17 documents that support its claims for damages,” no such documents were identified in their  
18 response to defendant’s discovery requests. At the very least, plaintiffs should have specifically  
19 identified those documents directly related to damages. Thus, the Court finds that plaintiffs  
20 should be able to provide an assessment of damages in light of the information they apparently  
21 already possess, and assert that they have produced, in sufficient detail to allow defendant to  
22 understand the parameters of its potential liability in this case.

23 Accordingly, the Court hereby COMPELS plaintiffs to identify which documents, if any,  
24 have been produced thus far that pertain to their damages claim. If no such documents have yet  
25 been produced, plaintiff shall produce them within 10 days from the date of this Order.

1 Plaintiffs are also warned that if no such documents have been produced, they may face  
2 sanctions for making material misrepresentations to this Court about the status of their discovery  
3 responses.

4 (2) Defendant recognizes that discovery is ongoing, and concedes that it is not yet  
5 asking for plaintiffs' itemized, expert damage report. Accordingly, plaintiffs shall produce that  
6 report as promised no later than May 11, 2005.

7 (3) Defendant's request for attorneys fees pursuant to Rule 37(a)(4)(A) of the Federal  
8 Rules of Civil Procedure is GRANTED. Plaintiff shall pay defendants fees in the amount of  
9 \$1,220.00 no later than 21 days from the date of this Order.

10 (4) The Clerk shall forward a copy of this Order to all counsel of record.

11 DATED this \_25\_ day of April, 2005.



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13 RICARDO S. MARTINEZ  
14 UNITED STATES DISTRICT JUDGE  
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